

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FEDERAL HOUSING FINANCE AGENCY,	:	
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Plaintiff,	:	
	:	
-v-	:	
	:	
UBS AMERICAS INC., et al.,	:	
Defendants;	:	
	:	
And other FHFA cases.	:	
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11 Civ. 5201 (DLC)
11 Civ. 6188 (DLC)
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11 Civ. 6202 (DLC)
11 Civ. 6203 (DLC)
11 Civ. 6739 (DLC)
11 Civ. 7010 (DLC)

SUPPLEMENTAL EXPERT  
SCHEDULING ORDER  
FOR  
TRANCHES 3 AND 4

DENISE COTE, District Judge:

WHEREAS, the Court entered an Expert Scheduling Order (the "ESO") on November 26, 2012, that set deadlines relating to expert discovery and established certain procedures for underwriting of loans at issue in FHFA v. UBS Americas, Inc., et al., 11-cv-5201 (the "Tranche 1 Action"), FHFA v. JPMorgan Chase & Co., et al., 11-cv-6188, and FHFA v. Merrill Lynch & Co., Inc., et al., 11-cv-6202 (together, the "Tranche 2 Actions");

WHEREAS, the ESO called for Plaintiffs and Defendants in FHFA v. Deutsche Bank AG, et al., 11-cv-6192, FHFA v. Goldman Sachs & Co., et al., 11-cv-6198, and FHFA v. Credit Suisse Holdings (USA), Inc., et al., 11-cv-6200 (collectively, the

"Tranche 3 Actions") and in FHFA v. HSBC North America Holdings, Inc., et al., 11-cv-6189, FHFA v. Barclays Bank PLC, et al., 11-cv-6190, FHFA v. First Horizon National Corp., et al., 11-cv-6193, FHFA v. Bank of America Corp., et al., 11-cv-6195, FHFA v. Citigroup, et al., 11-cv-6196, FHFA v. Nomura Holding America, Inc., et al., 11-cv-6201, FHFA v. SG Americas, Inc., et al., 11-cv-6203, FHFA v. Morgan Stanley, et al., 11-cv-6739, and FHFA v. Ally Financial, Inc., et al., 11-cv-7010 (collectively, the "Tranche 4 Actions") to advise the Court by January 31, 2013, of whether the parties believe it would be effective to extend the provisions of the ESO to the Tranche 3 and 4 Actions;

WHEREAS, the ESO also called for the Plaintiff and the Defendants in the Tranche 3 and 4 Actions to propose dates for expert discovery in those Actions;

WHEREAS, after meeting and conferring, those parties submitted competing proposals to the Court on February 4, 2013;

WHEREAS, on February 7, 2013, the Court made certain rulings at a status conference and directed the parties to further meet and confer regarding the schedule;

WHEREAS, after meeting and conferring, those parties submitted competing proposals to the Court on February 12, 2013;

WHEREAS, the Plaintiff and certain parties in the Tranche 1

and 2 Actions agreed to modify the ESO, as reflected in two Orders of February 13, 2013.

WHEREAS, at a status conference on February 14, 2013, the Court ruled on certain issues raised by the parties; and also directed them to further meet and confer and to submit either a joint order or an order containing competing proposals;

WHEREAS, at a status conference on February 21, 2013, the Court directed the parties to further meet and confer regarding the proposed schedule and directed them to submit either a joint order or an order containing competing proposals;

WHEREAS, on February 25, 2013, the parties presented their competing proposals;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

**Production, Identification, and Stipulation of Loans Files and Guidelines**

1. The provisions of Paragraphs 1 and 2 of the ESO shall apply to the Tranche 3 and Tranche 4 Actions.

2. The parties shall work together promptly on a good faith basis to identify all applicable Guidelines and applicable Loan Files relating to the Sample Loans<sup>1</sup> and stipulate to those

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<sup>1</sup>Unless otherwise defined herein, the defined terms in this Order shall have the meanings defined in the ESO.

Loan Files and Guidelines by April 30, 2013, in the manner set forth in Paragraphs 1 and 2 of the ESO; except that this deadline shall be May 31, 2013 for Guidelines and Loan Files relating to Sample Loans identified during January 2013. The parties shall meet and confer about the deadline for Guidelines and Loan Files relating to any Sample Loans identified after January 2013.

3. The parties shall meet and confer regarding the production and identification of, and stipulation to, Guidelines and Loan Files, and shall submit status reports to the Court on February 28, 2013, March 29, 2013, and April 30, 2013. An additional status report concerning Guidelines and Loan Files relating to Sample Loans identified during January 2013 shall be provided to the Court on May 31, 2013.

#### **Cost Shifting**

4. If a Guideline or a Loan File document relevant to a Sample Loan in a Tranche 3 or 4 Action is produced after April 30, 2013 (for Sample Loans disclosed by FHFA before January 2013) or after May 31, 2013 (for Sample Loans disclosed by FHFA during January 2013), then, (a) if the document is produced by FHFA from its own files, FHFA shall bear the costs of any re-underwriting related to the Sample Loan performed by Defendants, unless FHFA establishes good cause for the late production; or

(b) if the document is produced by a Defendant from its own files or by a third party, the Defendant shall bear the costs of any re-underwriting related to the Sample Loan performed by FHFA, unless the Defendant establishes good cause for the late production. In the event that the parties disagree about what constitutes good cause, such dispute shall be presented to the Court for resolution. There is a presumption that good cause cannot be shown where such additional documents impact more than ten (10) percent of the FHFA Sample Loans for any given Securitization.

**Diligence Disclosures**

5. Unless otherwise agreed between FHFA and a specific Tranche 3 or 4 Defendant, by March 1, 2013, each Defendant in the Tranche 3 and 4 Actions shall substantially complete disclosure of data regarding loans that were the subject of the Defendant's diligence efforts in the form of Exhibit 1 to this Order. Also by March 1, 2013, any such Defendant who has not completed that disclosure shall inform FHFA of the date by which it intends to complete that disclosure.

6. By April 5, 2013, each Defendant in the Tranche 3 and 4 Actions shall disclose (a) whether it intends to present a due diligence defense relating to loans outside of the supporting loan groups for the Securitizations; (b) whether, in presenting

that defense, it intends to make use of any set of loans that were the subject of its diligence efforts in which any of the members of the set come from outside of the supporting loan groups for the Securitizations (a "Non-SLG Diligence Set"); and (c) the type of analysis that it intends to perform on that Non-SLG Diligence Set (e.g., re-underwriting). A Defendant in the Tranche 3 or 4 Actions that discloses a Non-SLG Diligence Set shall either (a) identify that Non-SLG Diligence Set based upon a methodology jointly agreed upon with FHFA; or (b) identify that Non-SLG Diligence Set based upon another methodology, in which case the Defendant shall disclose that methodology to FHFA. A Defendant shall also identify each member of the Non-SLG Diligence Set by loan number and by available borrower information (including borrower name, property address, and loan amount). A Tranche 3 or 4 Defendant shall be foreclosed and precluded from using any Non-SLG Diligence Set related to such a defense that it does not disclose by April 5, 2013.

7. By April 19, 2013, the parties will meet and confer to determine whether either the Plaintiff or a Defendant believes it is necessary to obtain Guidelines or Loan Files for any member loan of the Non-SLG Diligence Set. If FHFA wishes to rely on a re-underwriting or other analysis of a Loan File for any Non-SLG Diligence Set for purposes of rebutting the

Defendant's disclosed due diligence defense, FHFA will by June 17, 2013, identify those loans by loan number and by available borrower information (including borrower name, property address, and loan amount).

**Rebuttal Set Disclosures**

8. By May 17, 2013, each Defendant in the Tranche 3 and 4 Actions shall inform FHFA of whether it intends to make use of any alternative set of loans in any Securitization for purposes of rebutting FHFA's alleged "defect" rate of the Sample Loans (a "Sample Loan Rebuttal Set"), and, if so, that Defendant shall identify (a) each member of that Sample Loan Rebuttal Set by loan number and by available borrower information (including borrower name, property address, and loan amount) such that FHFA may replicate the Defendant's analysis; and (b) the method used to select that Sample Loan Rebuttal Set. No Defendant in the Tranche 3 or 4 Actions shall be permitted to rely on a Sample Loan Rebuttal Set that was not so disclosed to FHFA.

**Remaining Disclosures**

9. By August 16, 2013, each Defendant in the Tranche 3 and 4 Actions shall inform FHFA of whether it intends to make use of any alternative set of loans for purposes other than those set forth above ("Remaining Alternative Set"), and, if so, that Defendant shall identify (a) each of those Remaining

Alternative Sets by loan number and by available borrower information (including borrower name, property address, and loan amount) such that FHFA may replicate the Defendant's analysis; (b) the method used to select those Remaining Alternative Sets; and (c) the type of analysis that it intends to perform on the Remaining Alternative Sets. No Defendant in the Tranche 3 or 4 Actions shall be permitted to rely on any Remaining Alternative Set that was not so disclosed to FHFA.

**Expert Report Dates**

10. The parties shall serve their re-underwriting expert reports on or before October 11, 2013.

11. The parties shall serve any additional expert reports on any issue for which they bear the burden of proof on or before November 22, 2013.

12. The parties shall serve any rebuttal re-underwriting expert reports on or before January 3, 2014.

13. On or before January 17, 2014, Defendants shall serve any rebuttal expert reports addressed to the Plaintiff's November 22, 2013 reports, and any expert reports they choose to submit on issues for which they do not bear the burden of proof.

14. On or before February 7, 2014, FHFA shall serve any rebuttal expert reports addressed to the Tranche 3 or 4 Defendants' November 22, 2013 reports and any expert report it

chooses to submit on issues for which it does not bear the burden of proof.

15. Expert discovery shall be completed by March 7, 2014.

16. Summary judgment motions in Tranche 3 and 4 Actions shall be filed by January 24, 2014. Opposition briefs shall be filed by March 21, 2014. Reply briefs shall be filed by April 11, 2014.

SO ORDERED:

Dated: New York, New York  
February 27, 2013

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DENISE COTE  
United States District Judge

# Exhibit 1

TEMPLATE FOR DUE DILIGENCE SAMPLE LOAN INFORMATION

<b>Case Name</b> (Case in which loan is at issue)	<b>Loan Number</b> (Loan number sent to due diligence firm)	<b>Securitization Name</b> (Securitization in which loan was included)
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Reviewing Diligence Firm	Property Street Address	City	State	Zip Code
(Due diligence firm conducting the review of the loan)				

Originator	Servicer
(Originator of loan - to get loan file)	(Current sub-servicer of loan - to get loan file)

<b>Alternate Loan Number 1</b>	<b>Alternate Loan Number 2</b>	<b>Borrower Name</b>	<b>Origination Date</b>
(Any alternate loan numbers from loan tapes, servicer manifests, etc.)			

**Original Loan Amount**